

Minutes

## **Commission to study the Comprehensive Shoreland Protection Act**

**Minutes of March 13, 2006 Meeting  
Rm 305, Legislative Office Building, Concord, NH  
10:00 am – 12:00 pm**

### **Members Present**

#### Interest Represented

House of Representatives  
Office of Energy and Planning  
Regional Planning Commissions  
NH Lakes Association  
At large waterfront owner  
NH Farm Bureau Federation  
UNH (estuary experience required)  
NH Association of Realtors  
NH Timberland Owners  
Landscaping Consultant  
NH Conservation Commissions  
NH Marine Trades Association  
NH Attorney General  
NH Wildlife Federation  
NH Waterworks Association

#### Representative

David Currier  
Jennifer DeLong (designee)  
Robert Snelling  
William Smith PhD  
Michele Grennon  
John McPhail  
Jeff Schloss  
Tom Howard  
Tom Hahn  
George Pellettieri  
Diane Hanley  
Paul Goodwin  
Jennifer Patterson (designee)  
James Kennedy  
Stephen Del Deo

### **Members absent**

Senate  
Senate  
House of Representatives  
NH DES  
At large waterfront owner  
NH Home Builders and Remodelers  
NH Municipal Association  
NH Rivers Council  
NH Natural Resource Scientists

Carl Johnson  
John Gallus  
Michael Whalley  
Rene Pelletier (designee)  
Eric Herr  
Joe Landers  
Carol Granfield  
Kathryn Nelson  
Cindy Balcius

### **Others in Attendance**

#### Representing

Staff  
NH Lakes Assoc.  
NH DES Limnology Center  
NH DES Wetlands Bureau

#### **Name**

D. Forst  
Jared Teutsch  
Jody Connor  
Mary Ann Tilton

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**10: 10 am** Meeting opened.

10:00 Rep. David Currier opened the meeting and requested that the members review the minutes of the March 13<sup>th</sup> meeting.

Robert Snelling motioned to accept the minutes without changes.

Jeff Schloss seconded the motion.

Rep Currier called for a vote and the minutes were accepted unanimously.

Rep. Currier reminded the Commission members they should be preparing white papers outlining the concerns and suggested modifications of the CSPA's language from their representative groups.

Darlene Forst, Secretary, asked if the Commission would be accepting white papers from groups not represented on the Commission.

Rep. Currier stated that outside papers would be accepted.

Mr. Snelling noted that he had sent an email to the Commission outlining his position that before the Commission could proceed to review the CSPA section by section they would need to reach agreement on what the problems were and what the Commission's goals are for the CSPA.

Rep. Currier suggested that the Commission should review the points raised in Mr. Snelling's email.

Ms. Forst noted that she had not received his email.

Copies of Mr. Snelling's email and the Guide to Redeveloping Shorefront Properties were distributed to the Commission members.

Michelle Grennon stated that the document was the result of a cooperative effort spearheaded by the North Country Resource Conservation Development.

Mr. Schloss stated that while the document was in need of an update which was in progress, it was still a valuable document.

Kathryn Nelson and Rep. Currier each asked if it would be possible to get numbers outlining the NH Dept. of Environmental Services budget for Shoreland Protection outreach.

Ms. Forst stated that she had recently reviewed those numbers and the total annual outreach was \$2,500.

Rep. Currier asked if this was the annual budget.

Ms. Forst stated that the total budget dedicated to Shoreland, not including staff, was \$2,500 per year.

Rep. Currier asked Mr. Snelling to review his email with the Commission to open the discussion.

Mr. Snelling reviewed the main concerns outlined in his email which were the apparent disconnect between the Wetlands Bureau and the Shoreland Program, the lack of a permit requirement, and insufficient outreach efforts. He added that the funding outreach was not in his email but the in light of the budget amount of \$2,500 funding outreach was also an issue.

Rep. Currier asked the Commission if this list was "complete" or if there were other items that members felt should be added.

Paul Goodwin stated that the Marine Trades Association had met during the previous week and discussed their position on the CSPA and that all of there concerns were on Mr. Snelling's list. He stated that of the issues on the list Marine Trades felt the education was a key issue

Rep. Currier asked if it would be possible to draft a form, like a checklist, for the public to use when preparing to do work within the protected shoreland to help the public understand the requirements and to make sure that they would be accountable and unable to use the "I didn't know excuse" to avoid enforcement action.

Ms. Forst asked if he meant something similar to the PBN, if it would be required, and for what projects.

Rep. Currier stated that he thought maybe a just a form that could be used would be fine. He asked why it should be required.

Ms. Forst stated that unless it was submitted to someone then it would not be effective for proving that the individual had knowledge of the CSPA and it is unusual for people to complete voluntary paperwork. If it were not required why would they do it?

Mr. Goodwin stated that he thought such a document could be helpful.

Mr. Schloss noted that Mr. Goodwin and Mr. Currier were hitting on outreach issues but that there were also issues of accountability and he asked how one would set up a reasonable system of checks on work in the protected shoreland.

Mr. Currier suggested that different processes could cover different issues such as the Subsurface process covers septic issues.

Mr. Schloss stated that there were still two different issues, education and accountability, and that they needed to find a way make sure that property owners investigated the issues before they started work.

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Steve Del Deo stated that education should be a shared responsibility. He asked if banks required buyers of shorefront properties to be educated in the requirements of the CSPA.

Tom Howard stated that this was not something that was required by banks.

James Kennedy asked if there was one central place where all building permits recorded.

Ms. Forst stated there was not.

Mr. Kennedy asked if PBN's were filed with the towns.

Ms. Forst stated that PBN's were all filed with NH DES but were submitted through the towns.

Mr. Snelling said that many towns include shoreland protection related questions on their building permit applications and it seems to work therefore it would seem that shoreland protection standards should fold easily into the local building permit process. The process is there but the responsibility is not clear.

Rep. Currier stated that all towns have Code Enforcement Officers.

Various Commission members stated that this was not the cases and added that some towns do not have zoning ordinances or building permit requirements either.

Rep. Currier and Mr. Snelling asked if requiring the towns to adopt and enforce the standards of the CSPA would violate the unfunded mandate restriction Article 28a of the NH Constitution.

Jennifer Patterson stated that if town's merely had to enforce the standard it would not violate 28a.

Mr. Howard asked how the energy codes were enforced since this was a state set standard that was locally enforced. He suggested that perhaps the Commission only needed to focus on the towns that did not have established zoning. He stated that to his surprise the realtors, as a group, would find a state-wide standard which was locally enforced to be acceptable and that a PBN type process could work.

Ms. Grennon asked if requiring this process would be considered an unfunded mandate.

Mr. Snelling stated that it would not since there was nothing to be funded since they were utilizing an existing process. Towns without zoning could fall back to the state.

Ms. Patterson pointed out that the existing statute does this now but it is ineffective. There needs to be acknowledgement of the CSPA through something like a checklist in the permit process. All municipalities currently have the ability to enforce the CSPA but they do not. There needs to be better communication between the towns and the state.

Tom Hahn Suggested that the Commission needs to get more feedback from the towns.

Rep. Currier stated that the three lobbyists representing the towns had expressed concerns about the CSPA becoming an unfunded mandate but otherwise agreed that the Act needed to be clarified.

William Smith stated that any time there is a permit process there is a cost and he was fine if that cost went to the town but they had to have a way to cover it and suggested an application fee to cover it.

Mr. Snelling stated that fees were already required with building permit applications and that they might simply add a shoreland protection surcharge.

Ms. Forst stated that the Shoreland Program had already drafted a checklist for use with DES permit application but that it was only for use with state applications and towns could not be forced to use it. The draft checklist will be provided to the Commission.

Mr. Snelling asked if the state could require a local permit.

Ms. Patterson stated that if it were state law and there was no local zoning then it would have to be a state permit.

George Pellettieri stated that clarity was what is necessary. Determine what will be allowed and then educate the public. Only a few areas will trigger a response for example a boathouse needs a permit from the Wetlands Bureau. Having a uniform setback would help to clarify things. Basal area needs to be changed and there needs to be increased outreach but the changes are not really complicated.

Ms. Patterson asked if there would be a variance process and pointed out that there are currently processes for both variances and waivers. If there would be variances, who would issue them? Currently only NH DES has the authority to grant variances.

Rep. Currier stated that he felt the authority to grant variances should remain solely with the state.

Ms. Patterson pointed out that having a local permit process with state issued variances would mean there would have to be multiple appeal routes.

Rep. Currier asked how they would handle non-conforming lots.

Ms. Patterson explained that these issues are currently handled under RSA 483-B:10 and RSA 483-B:11. Variances are not required to build on non-conforming lots.

Rep. Currier asked if variances were issued using the same standard used by zoning boards which are difficult standards to meet.

Ms. Patter stated that the same standards were used.

Rep. Currier asked if the Commissioner of DES was bound to these standards.

Ms. Patterson stated that he was.

Rep. Currier stated that it seemed that NH DES received a lot of calls from people who simply did not understand the requirements of the CSPA.

Ms. Forst stated that the moment someone cut for the footprint of a house DES begins to receive calls.

Ms. Patterson stated that section B:10 gave DES some oversight of the activities on non-conforming lots and section B:11 established a waiver process but that she was unsure what percentage of the workload was associated with non-conforming lots and structures.

Mr. Snelling stated that this seemed like a logical approach and that the first line of permitting should be local but the all exceptions would be granted by the state.

Ms. Forst stated that waiver requests account for approximately 80% of the non enforcement workload. The problem with the current waiver process is that it is qualitative, not quantitative, and tends to become very emotional.

Rep. Currier stated that the non-conforming structures section of the CSPA had just been changed. He asked what the change entailed.

Ms. Patterson explained that the law now prevented expansion of both the footprint and outside dimensions which included height.

Ms. Forst explained that addition of a basement below grade and changes to roof pitch that were necessary for structural safety were allowed.

Ms. Patterson asked about expansion behind the primary building setback.

Ms. Forst explained that any construction which took place behind the primary building line was allowed.

Mr. Goodwin stated that was not what the law said.

Ms. Forst agreed it was not.

Ms. Patterson stated that the current language echoes that found in RSA 482-A:26 pertaining to residential structures over public waters.

Ms. Forst explained that the language of RSA 482-A was specifically chosen because it prohibited expansion in all dimensional aspects. Previously the law had allowed expansion but

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did not allow repair or replacement in kind. The law was changed to prohibit expansion but allow replacement.

Rep. Currier asked if decks were included in the house footprint as impervious. It was explained that they were.

Mr. Goodwin stated that there were ways that decks could be constructed to be pervious and cited grating used on the boardwalks at Lily Pond adjacent to the Laconia Airport as an example.

Mr. Snelling asked how impervious was defined.

Ms. Forst explained that there were established engineering standards.

Mr. Schloss stated that whether or not the deck was pervious was not the only issue but that they should also consider the resulting additional removal of vegetation and incidental encroachment and human activity impacts.

Mr. Pellettieri stated that whether or not the deck is considered pervious would make a difference if we are to adopt a standard that includes a limit on the % of impervious surface.

Rep. Currier asked how impervious surface could be tied to basal area.

Ms. Patterson stated that the Maine standard could be used to maintain a minimum level of vegetation.

Mr. Smith stated that woody vegetation including shrubs and ground covers needed protection.

Mr. Schloss asked if Maine required restoration or additional planting in areas that did not meet the minimum standards.

Ms. Forst stated that they did not. If there was less than the minimum required vegetation they simply could not cut anything. The property will eventually revert to an acceptable level.

Mr. Smith suggested something similar to a current use exemption as a tax break to encourage buffer restoration.

Rep. Currier suggested that this would never succeed.

Mr. Goodwin stated that similar concepts had been proposed and defeated.

Rep. Currier stated that the town's reliance on property taxes would cause any such proposal to be defeated.

Mr. Goodwin suggested that perhaps you could get a boathouse if you agreed to a larger buffer.

Mr. Pellettieri stated that towns make these kinds of trades all the time.

Mr. Schloss stated that some towns will consider nonconforming lots to favor cluster development and allow for more contiguous open space.

Ms. Patterson stated that the state had some leeway to do this under the current language of RSA 483-B:10 and B:11.

Ms. Forst stated that there was no alternative to consider smart alternatives on conforming lots under the current variance requirement.

Mr. Goodwin noted that boathouses were specifically allowed under RSA 483-B:10. He also noted that the Subsurface Program encourages innovative, smart, design.

Mr. Schloss noted that you should be able to consider development designed in a manner that preserved open space.

Mr. Pellettieri asked if DES was asking for the ability to consider smart alternatives.

Ms. Forst explained that DES was not making a request but simply wanted the Commission to understand that these types of alternatives were not something DES could consider under the current variance process.

Ms. Patterson noted that the state was nervous about the idea of getting into zoning.

Mr. Howard suggested that the checklist mentioned earlier would be a good start.

Ms. Forst said that it would be provided.

Mr. Schloss stated that such a document would be helpful and would eliminate some of the excuses.

Mr. Currier asked the Commission if the state should require a new shoreland permit or continue to use the current 2 tier system.

Mr. Goodwin asked how the budgeted amount of \$2,500 for outreach was reached.

Ms. Forst stated that she did not know the answer but would look into it.

Rep. Currier asked if that was the whole budget, including travel.

Ms. Forst explained that these were the only funds specifically budgeted to the Shoreland Program but that whenever possible DES fleet vehicles were used and the mileage expenses and salaries are drawn from another account.

Rep. Currier asked how many people were funded as part of the Shoreland Program.

Ms. Forst explained that there was one outreach position and one enforcement position funded specifically for the Shoreland Program. Three other fulltime positions, including the Shoreland Section Supervisor position, and one part-time position which reviews all variance and waiver requests, are funded under the Wetlands Program, primarily by wetlands application fees. The positions are responsible for shoreline permitting as well and not solely dedicated to CSPA issues.



Rep. Currier asked if the Commission was ready to go over the minimum standards.

Ms. Patterson volunteered to attempt to draft language to clarify RSA 483-B:6, Prior Approval; Permits, and require that the checklist be completed and permits be obtained prior to initiating work within the protected shoreland.

Mr. Snelling asked if it could be made clear that the town was responsible for permits for new construction.

Ms. Patterson stated that she would try to include that in the revised language.

Rep. Currier asked what law governed residences over public waters.

Ms. Forst stated that they were covered under RSA 482-A:26.

Rep. Currier asked if one of the Commission members with wetlands experience would be willing to try to draft language relative to the woodland buffer.

Mr. Pellettieri asked if the Commission members should still produce white papers or simply add points to the list created by Mr. Snelling.

Rep. Currier explained that the commission members should draft white papers because their independent white papers will show support for the points being addressed.

Mr. Snelling asked if it would be better to agree on a list of points and draft white papers pertaining to solutions, and he also suggested that the Commission add the ability to consider creative or innovative solutions to the list of points.

Rep. Currier asked if innovative solutions could be considered now.

Ms. Patterson stated that they could only be considered relative to the waiver process for existing non-conforming structures, conforming lots must seek variances under RSA 483-B:9, V, g.

James Kennedy suggested a small whitepaper about including 2<sup>nd</sup> order streams under the CSPA.

Rep. Currier stated that there was already a bill pending that would affect that change if passed.

Mr. Snelling asked if such a change would be within the purview of the Commission.

Rep. Currier stated it would be.

Mr. Schloss noted that currently the CSPA applied to stream that were 4<sup>th</sup> order or larger only.

Mr. Howard stated that the Commission should focus on issues where there would be a consensus and this was not one of those issues.

Rep. Currier asked if Mr. Smith and Mr. Hahn could work on adopting a point system similar to Maine's for protecting the woodland buffer.

Mr. Kennedy asked if this meant that the idea of a no cut zone was off the table.

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Rep. Currier asked for feedback from the Commission.

Mr. Goodwin suggested that a 35 ft no cut zone would be reasonable.

Mr. Howard stated that the realtors would not be agreeable to a no cut zone.

Diane Hanley stated that the basal area system is confusing but a no cut zone would be clear and would work.

Rep. Currier asked if “no cut” meant that you could not cut anything.

Various Commission members explained that “no cut” meant no removal of vegetation. Trimming would be acceptable.

Mr. Smith asked who was in the buffer group.

Rep. Currier stated that group would be Mr. Smith, Mr. Hahn, and Mr. Snelling, Ms. Hanley and Mr. Kennedy.

Meeting adjourned at 11:55.

Next Meetings Rm 305, Legislative Office Building, Concord

April 10, 2006, 10:00 – 12:00

May 8, 2006, 10:00 – 12:00